

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF PUERTO RICO  
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4

J. CAJIGAS & ASSOCIATES, PSC,

Plaintiff,

v.

MUNICIPALITY OF AGUADA, et al.,

Defendants.

Civil No. 13-1359 (JAF)

5  
6 **OPINION AND ORDER**

7 We must decide, among other issues, whether a municipality violated the First  
8 Amendment freedoms of a corporation when it breached a contract for the design and  
9 construction of a public plaza.

10 **I.**

11 **Background**

12 J. Cajigas & Associates, PSC, is an engineering and construction company located  
13  
14 in Aguada, Puerto Rico.

15 In December 2012, J. Cajigas & Associates was awarded a contract with the  
16 Municipality of Aguada for the design and construction of a public plaza and boardwalk.  
17 Under the terms of the contract, the Municipality agreed to pay J. Cajigas & Associates in  
18 two phases: \$95,130 for design and site engineering and \$487,882 for construction and  
19 completion. The contract was amended on January 11, 2013.  
20

1           On January 17, 2013 J. Cajigas & Associates' company president met with Jessie  
2   Cortés-Ramos, Mayor of Aguada, to discuss the project's progress—including the  
3   completion of phase one—and to ask for the appointment of a project inspector. On  
4   March 4, 2013, Eduardo Ramirez-Soto, an official with the Municipality, informed  
5   J. Cajigas & Associates that the Municipality had retained an inspector for the project.

6           Eleven days later, on March 15, 2013, J. Cajigas & Associates received a letter  
7   from the Municipality terminating the contract. The letter indicated that the  
8   Municipality's finances could not support the continuation of the project. On March 19,  
9   2013, the Municipality requested an invoice for the first phase of the project.

10          J. Cajigas & Associates attempted to contact the city by letter but did not receive a  
11   response. The company president visited the municipal offices to press for an  
12   explanation for the cancelation of the contract. Mayor Cortés-Ramos told the company  
13   president that political pressures made it impossible to do business with J. Cajigas &  
14   Associates, a company headed by members of a rival political party. The company  
15   president told Mayor Cortés-Ramos that breach of the contract under such terms was  
16   illegal and unconstitutional. Mayor Cortés-Ramos responded that he was not prepared to  
17   fight people of his own party and that he was prepared for any legal action.

18          The plaintiff filed this suit against Mayor Cortés-Ramos, Ramirez-Soto, and the  
19   Municipality of Aguada, asserting that they discriminated against it on the basis of the  
20   company president's political affiliation, in violation of the First, Fifth, and Fourteenth  
21   Amendments, 42 U.S.C. § 1983, and Commonwealth law statutes. (Docket No. 23.) The  
22   plaintiff also asserts a claim for breach of contract.



1 (1977)). J. Cajigas & Associates fulfills these requirements by alleging that Mayor  
2 Cortés-Ramos knew the company president belonged to the New Progressive Party and  
3 substantially relied on that fact to terminate the contract with J. Cajigas & Associates,  
4 despite the fact that the Municipality already owed a sum of money under the contract's  
5 terms.

6 Although liability under Section 1983 "cannot rest solely on a defendant's position  
7 of authority," Ocasio-Hernández v. Fortuno-Burset, 640 F.3d 1, 16 (1st Cir. 2011), here,  
8 J. Cajigas & Associates alleges that Mayor Cortés-Ramos spoke with the company  
9 president and explained his inability to do business with J. Cajigas & Associates on the  
10 basis of political affiliation. That alone is something more than basing liability on an  
11 individual's mere authority. Thus, J. Cajigas & Associates has stated a claim under the  
12 First Amendment, and we deny the defendants' motion to dismiss the plaintiff's First  
13 Amendment discrimination claim. See Ramirez v. Arlequin, 447 F.3d 19, 24 (1st Cir.  
14 2006); Baker v. Coxe, 230 F.3d 470, 475 (1st Cir.2000).

15 **C. Fifth Amendment Claim**

16 The plaintiff does not provide any explanation or discuss any point of law to  
17 support its contention that its claim implicates the Fifth Amendment. Perfunctory and  
18 undeveloped arguments, and arguments that are unsupported by pertinent authority, are deemed  
19 waived. See Medina-Rivera v. MVM, Inc., 713 F.3d 132, 140–41 (1st Cir.2013)  
20 ("developing a sustained argument out of ... legal precedents" is a party's job, and when  
21 the party presents only "undeveloped arguments," they will be deemed waived; internal  
22 quotation marks and citation omitted); see also Raines v. U.S. Department of Justice, 424

1 F.Supp.2d 60, 66 n.3 (D.D.C.2006) (noting that it is not the obligation of the court to research  
2 and construct legal arguments open to parties, especially when they are represented by counsel);  
3 Rivera-Gomez v. de Castro, 843 F.2d 631, 635 (1st Cir.1988) (stating that it is the party's task to  
4 spell out his arguments squarely and distinctly). Thus, the plaintiff's Fifth Amendment claim  
5 is waived.

6 **D. Fourteenth Amendment Claim**

7 The plaintiff also alleges that the defendants violated the equal protection clause of  
8 the Fourteenth Amendment. To prove a violation of the equal protection clause, the  
9 plaintiff must show that (1) compared with others similarly situated, he was selectively  
10 treated; and that (2) such selective treatment was based on impermissible considerations  
11 such as race, sex or religion. Freeman v. Town of Hudson, 714 F.3d 29, 38 (1st Cir.  
12 2013). The plaintiff, however, makes no allegations that it was selectively treated;  
13 neither does it allege that the defendants acted because of racial or class-based animus.

14 Instead, we agree with the defendants that the plaintiff's equal protection claim is  
15 merely a restatement of the First Amendment claim. For speech-related claims, the First  
16 Amendment provides greater protection than the equal protection clause. Where a  
17 plaintiff alleges both types of claims, courts will consider only the First Amendment  
18 claim. JOHN E. NOWAK, RONALD D. ROTUNDA & J. NELSON YOUNG, HANDBOOK ON  
19 CONSTITUTIONAL LAW (1978); see also Uphoff Figueroa v. Alejandro, 597 F.3d 423,  
20 426 (1st Cir. 2010) ("Once again we remind litigants that political discrimination and  
21 retaliation claims under the First Amendment cannot be restated as claims under the  
22 Equal Protection Clause."). As a result, the plaintiff's equal protection claim is  
23 **DISMISSED WITH PREJUDICE.**

1 **E. Claims for Emotional Damages**

2 Although J. Cajigas claimed damages for emotional distress in his complaint, both  
3 parties now agree that this type of damages is not available to corporate defendants. The  
4 emotional distress claim is **DISMISSED WITH PREJUDICE**.

5 **IV.**

6 **Conclusion**

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8 We **GRANT**, in part, and **DENY**, in part, the defendants' motions to dismiss the  
9 complaint. (Docket Nos. 9, 10). The plaintiff's claims under the Fifth and Fourteenth  
10 Amendments are **DISMISSED WITH PREJUDICE**. The plaintiff's claims for  
11 emotional damages are **DISMISSED WITH PREJUDICE**. Because we retain  
12 jurisdiction over the plaintiff's First Amendment claim, jurisdiction over the  
13 supplemental Puerto Rico law claims remains proper under 28 U.S.C. § 1367.

14 **IT IS SO ORDERED.**

15 San Juan, Puerto Rico, this 29th day of January, 2013.

16 S/José Antonio Fusté  
17 JOSE ANTONIO FUSTE  
18 U. S. DISTRICT JUDGE